

AMENDED IN SENATE APRIL 28, 2003

SENATE BILL

No. 168

**Introduced by Committee on Energy, Utilities and
Communications (Senators Bowen (Chair), Battin, Dunn,
Morrow, and Sher)**

February 12, 2003

An act to amend ~~Section 445 of~~ Sections 25401.2, 25519, 25523, 25525, and 25620.5 of, and to amend and renumber Section 25620.10 of, the Public Resources Code, and to amend Section 445 of, and to repeal Division 4.7 (commencing with Section 9201) of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 168, as amended, Committee on Energy, Utilities and Communications. Renewable Resource Trust Fund.

~~Existing~~

(1) The Warren-Alquist State Energy Resources Conservation and Development Act requires the State Energy Resources Conservation and Development Commission to certify a sufficient number of sites and related facilities to provide a supply of electric power sufficient to accommodate projected demand for power statewide. The act requires the commission to be the lead agency. Existing law requires the commission to complete an environmental impact report (EIR) within one year after receipt of an application unless the commission's regulatory program governing site and facility related proceeding is certified by the Resources Agency.

This bill would require, if the commission's regulatory program is certified, that any other public agency that must make a decision that is subject to the California Environmental Quality Act on a site or

related facility, use the commission's final staff assessment, unless the commission determines that another document is more appropriate for a particular site or facility, in the same manner as they would use an EIR or negative declaration prepared by a lead agency.

(2) Existing law authorizes the commission to solicit applications for awards, using a sealed competitive bid, competitive negotiation process, multiparty agreement, single source, or sole source method. Existing law permits the cost to the state to be reasonable.

This bill would require the cost to the state to be reasonable.

(3) Existing law requires the commission to regularly convene an advisory board that is required to make recommendations to guide the commission's selection of specified programs and projects to be funded. Existing law specifies the members of the advisory board.

This bill would instead require the board membership to include, as appropriate, but not be limited to, those specified representatives.

(4) Existing law provides for the Renewable Resource Trust Fund in the State Treasury and establishes certain accounts in the Renewable Resource Trust Fund. Existing law requires, upon notification by the ~~Energy Commission~~ commission, the Controller to pay all awards of the money in the accounts for certain renewable energy purposes. Existing law requires the ~~Energy Commission~~ commission to report to the Legislature on the implementation of these provisions on a quarterly basis.

This bill instead would require the ~~Energy Commission~~ commission to report to the Legislature on the implementation of the Renewable Resource Trust Fund on an annual basis.

(5) Existing law requires the commission, commencing on or before March 1, 1985, to participate in a meeting on an annual basis that includes specified representatives, the purpose of which is to work towards achieving specified goals related to energy research, development, and demonstration projects.

This bill would repeal those provisions.

(6) This bill would make other related and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25401.2 of the Public Resources Code
2 is amended to read:

1 25401.2. (a) As part of the ~~biennial energy conservation~~
2 report required by Section ~~25401.1~~ 25302, the commission shall
3 develop and update an inventory of current and potential
4 cost-effective opportunities in each utility's service territory, to
5 improve efficiencies and to help utilities manage loads in all
6 sectors of natural gas and electricity use. The report shall include
7 estimates of the overall magnitude of these resources, load shapes,
8 and the projected costs associated with delivering the various types
9 of energy savings that are identified in the inventory. The report
10 shall also estimate the amount and incremental cost per unit of
11 potential energy efficiency and load management activities.
12 Where applicable, the inventory shall include data on variations in
13 savings and costs associated with particular measures. The report
14 shall take into consideration environmental benefits as developed
15 in related commission and public utilities commission
16 proceedings.

17 (b) The commission shall develop and maintain the inventory
18 in consultation with electric and gas utilities, the Public Utilities
19 Commission, academic institutions, and other interested parties.

20 (c) The commission shall convene a technical advisory group
21 to develop an analytic framework for the inventory, to discuss the
22 level of detail at which the inventory would operate, and to ensure
23 that the inventory is consistent with other demand-side data bases.
24 Privately owned electric and gas utilities shall provide financial
25 support, gather data, and provide analysis for activities that the
26 technical advisory group recommends. The technical advisory
27 group shall terminate on January 1, 1993.

28 *SEC. 2. Section 25519 of the Public Resources Code is*
29 *amended to read:*

30 25519. (a) In order to obtain certification for a site and
31 related facility, an application for certification of the site and
32 related facility shall be filed with the commission. The application
33 shall be in form prescribed by the commission and shall be for a
34 site and related facility that has been found to be acceptable by the
35 commission pursuant to Section 25516, or for an additional
36 facility at a site that has been designated a potential
37 multiple-facility site pursuant to Section 25514.5 and found to be
38 acceptable pursuant to Sections 25516 and 25516.5. An
39 application for an additional facility at a potential multiple-facility
40 site shall be subject to the conditions and review specified in

1 Section 25520.5. An application may not be filed for a site and
2 related facility, if there is no suitable alternative for the site and
3 related facility that was previously found to be acceptable by the
4 commission, unless the commission has approved the notice based
5 on the one site as specified in Section 25516.

6 (b) The commission, upon its own motion or in response to the
7 request of ~~any~~ a party, may require the applicant to submit any
8 information, document, or data, in addition to the attachments
9 required by subdivision (i), that it determines is reasonably
10 necessary to make ~~any~~ a decision on the application.

11 (c) The commission shall be the lead agency as provided in
12 Section 21165 for all projects that require certification pursuant to
13 this chapter and for projects that are exempted from ~~such that~~
14 certification pursuant to Section 25541. Unless the commission's
15 regulatory program governing site and facility certification and
16 related proceedings are certified by the Resources Agency
17 pursuant to Section 21080.5, an environmental impact report shall
18 be completed within one year after receipt of the application. If the
19 ~~commission prepares a document or documents in the place of an~~
20 ~~environmental impact report or negative declaration under a~~
21 ~~commission's regulatory program is~~ certified pursuant to Section
22 21080.5, any other public agency that must make a decision that
23 is subject to the California Environmental Quality Act, Division
24 13 (commencing with Section 21000), on a site or related facility,
25 shall use the ~~document or documents prepared by the commission~~
26 *final staff assessment, unless the commission determines another*
27 *document is more appropriate for a particular site or facility*, in the
28 same manner as they would use an environmental impact report or
29 negative declaration prepared by a lead agency.

30 (d) If the site and related facility specified in the application is
31 proposed to be located in the coastal zone, the commission shall
32 transmit a copy of the application to the California Coastal
33 Commission for its review and comments.

34 (e) If the site and related facility specified in the application is
35 proposed to be located in the Suisun Marsh or the jurisdiction of
36 the San Francisco Bay Conservation and Development
37 Commission, the commission shall transmit a copy of the
38 application to the San Francisco Bay Conservation and
39 Development Commission for its review and comments.

(f) Upon receipt of an application, the commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area of the proposed site and related facility. Those local agencies shall review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.

(g) Upon receipt of an application, the commission shall cause a summary of the application to be published in a newspaper of general circulation in the county in which the site and related facilities, or any part thereof, designated in the application, is proposed to be located. The commission shall transmit a copy of the application to each federal and state agency having jurisdiction or special interest in matters pertinent to the proposed site and related facilities and to the Attorney General.

(h) Local and state agencies having jurisdiction or special interest in matters pertinent to the proposed site and related facilities shall provide their comments and recommendations on the project within 180 days of the date of filing of an application.

(i) The adviser shall require that adequate notice is given to the public and that the procedures specified by this division are complied with.

(j) For ~~any~~ a proposed site and related facility requiring a certificate of public convenience and necessity, the commission shall transmit a copy of the application to the Public Utilities Commission and request the comments and recommendations of the Public Utilities Commission on the economic, financial, rate, system reliability, and service implications of the proposed site and related facility. If the commission requires modification of the proposed facility, the commission shall consult with the Public Utilities Commission regarding the economic, financial, rate, system reliability, and service implications of those modifications.

(k) The commission shall transmit a copy of the application to any governmental agency not specifically mentioned in this act, but ~~which~~ *that* it finds has any information or interest in the proposed site and related facilities, and shall invite the comments and recommendations of each agency. The commission shall

1 request ~~any~~ relevant laws, ordinances, or regulations that an
2 agency has promulgated or administered.

3 (I) An application for certification of ~~any~~ a site and related
4 facilities shall contain a listing of every federal agency from which
5 ~~any~~ an approval or authorization concerning the proposed site is
6 required, specifying the approvals or authorizations obtained at
7 the time of the application and the schedule for obtaining ~~any~~
8 approvals or authorizations pending.

9 *SEC. 3. Section 25523 of the Public Resources Code is*
10 *amended to read:*

11 25523. The commission shall prepare a written decision after
12 the public hearing on an application, which includes all of the
13 following:

14 (a) Specific provisions relating to the manner in which the
15 proposed facility is to be designed, sited, and operated in order to
16 protect environmental quality and assure public health and safety.

17 (b) In the case of a site to be located in the coastal zone, specific
18 provisions to meet the objectives of Division 20 (commencing
19 with Section 30000) as may be specified in the report submitted by
20 the California Coastal Commission pursuant to subdivision (d) of
21 Section 30413, unless the commission specifically finds that the
22 adoption of the provisions specified in the report would result in
23 greater adverse effect on the environment or that the provisions
24 proposed in the report would not be feasible.

25 (c) In the case of a site to be located in the Suisun Marsh or in
26 the jurisdiction of the San Francisco Bay Conservation and
27 Development Commission, specific provisions to meet the
28 requirements of Division 19 (commencing with Section 29000) of
29 this code or Title 7.2 (commencing with Section 66600) of the
30 Government Code as may be specified in the report submitted by
31 the San Francisco Bay Conservation and Development
32 Commission pursuant to subdivision (d) of Section 66645 of the
33 Government Code, unless the commission specifically finds that
34 the adoption of the provisions specified in the report would result
35 in greater adverse effect on the environment or the provisions
36 proposed in the report would not be feasible.

37 (d) (1) Findings regarding the conformity of the proposed site
38 and related facilities with standards adopted by the commission
39 pursuant to Section 25216.3 and subdivision (d) of Section 25402,
40 with public safety standards and the applicable air and water

1 quality standards, and with other ~~relevant~~ *applicable* local,
2 regional, state, and federal standards, ordinances, or laws. If the
3 commission finds that there is noncompliance with ~~any~~ a state,
4 local, or regional ordinance or regulation in the application, it shall
5 consult and meet with the state, local, or regional governmental
6 agency concerned to attempt to correct or eliminate the
7 noncompliance. If the noncompliance cannot be corrected or
8 eliminated, the commission shall inform the state, local, or
9 regional governmental agency if it makes the findings required by
10 Section 25525.

11 (2) The commission may not find that the proposed facility
12 conforms with applicable air quality standards pursuant to
13 paragraph (1) unless the applicable air pollution control district or
14 air quality management district certifies, prior to the licensing of
15 the project by the commission, that complete emissions offsets for
16 the proposed facility have been identified and will be obtained by
17 the applicant within the time required by the district's rules or
18 unless the applicable air pollution control district or air quality
19 management district certifies that the applicant requires emissions
20 offsets to be obtained prior to the commencement of operation
21 consistent with Section 42314.3 of the Health and Safety Code and
22 prior to commencement of the operation of the proposed facility.
23 The commission shall require as a condition of certification that
24 the applicant obtain any required emission offsets within the time
25 required by the applicable district rules, consistent with any
26 applicable federal and state laws and regulations, and prior to the
27 commencement of the operation of the proposed facility.

28 (e) Provision for restoring the site as necessary to protect the
29 environment, if the commission denies approval of the
30 application.

31 (f) In the case of a site and related facility using resource
32 recovery (waste-to-energy) technology, specific conditions
33 requiring that the facility be monitored to ensure compliance with
34 paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315
35 of the Health and Safety Code.

36 (g) In the case of a facility, other than a resource recovery
37 facility subject to subdivision (f), specific conditions requiring the
38 facility to be monitored to ensure compliance with toxic air
39 contaminant control measures adopted by an air pollution control
40 district or air quality management district pursuant to subdivision

(d) of Section 39666 or Section 41700 of the Health and Safety Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

(h) A discussion of any public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits.

SEC. 4. Section 25525 of the Public Resources Code is amended to read:

25525. The commission ~~shall~~ may not certify ~~any~~ a facility contained in the application when it finds, pursuant to subdivision ~~(b)~~ (d) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that ~~such~~ the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving ~~such~~ public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability. ~~In no event shall the~~ The commission may not make ~~any~~ a finding in conflict with applicable federal law or regulation. The basis for these findings shall be reduced to writing and submitted as part of the record pursuant to Section 25523.

SEC. 5. Section 25620.5 of the Public Resources Code is amended to read:

25620.5. (a) The commission may solicit applications for awards, using a sealed competitive bid, competitive negotiation process, commission-issued intradepartmental master agreement, the methods for selection of professional services firms set forth in Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, interagency agreement, single source, or sole source method. When scoring teams are convened to review and score proposals, the scoring teams may include persons not employed by the commission, as long as employees of the state constitute no less than 50 percent of the membership of the scoring team. A person participating on a scoring team may not have any conflict of interest with respect to the proposal before the scoring team.

(b) A sealed bid method may be used when goods and services to be acquired can be described with sufficient specificity so that

1 bids can be evaluated against specifications and criteria set forth
2 in the solicitation for bids.

3 (c) The commission may use a competitive negotiation process
4 in any of the following circumstances:

5 (1) Whenever the desired award is not for a fixed price.

6 (2) Whenever project specifications cannot be drafted in
7 sufficient detail so as to be applicable to a sealed competitive bid.

8 (3) Whenever there is a need to compare the different price,
9 quality, and structural factors of the bids submitted.

10 (4) Whenever there is a need to afford bidders an opportunity
11 to revise their proposals.

12 (5) Whenever oral or written discussions with bidders
13 concerning the technical and price aspects of their proposals will
14 provide better results to the state.

15 (6) Whenever the price of the award is not the determining
16 factor.

17 (d) The commission may establish interagency agreements.

18 (e) The commission may provide awards on a single source
19 basis by choosing from among two or more parties or by soliciting
20 multiple applications from parties capable of supplying or
21 providing similar goods or services. The cost to the state ~~may~~ *shall*
22 be reasonable and the commission ~~shall~~ *may* only enter into a
23 single source agreement with a particular ~~entity~~ *party* if the
24 commission determines that it is in the state's best interests.

25 (f) The commission, in accordance with subdivision (g) and in
26 consultation with the Department of General Services, may
27 provide awards on a sole source basis when the cost to the state is
28 reasonable and the commission makes any of the following
29 determinations:

30 (1) The proposal was unsolicited and meets the evaluation
31 criteria of this chapter.

32 (2) The expertise, service, or product is unique.

33 (3) A competitive solicitation would frustrate obtaining
34 necessary information, goods, or services in a timely manner.

35 (4) The award funds the next phase of a multiphased proposal
36 and the existing agreement is being satisfactorily performed.

37 (5) When it is determined by the commission to be in the best
38 interests of the state.

(g) The commission may not use a sole source basis for an award pursuant to subdivision (f), unless both of the following conditions are met:

(1) The commission, at least 30 days prior to taking an action pursuant to subdivision (f), notifies the Joint Legislative Budget Committee, in writing, of its intent to take the proposed action.

(2) The Joint Legislative Budget Committee either approves or does not disapprove the proposed action within 30 days from the date of notification required by paragraph (1).

(h) The commission shall submit semiannual reports to the Legislative Analyst and to the appropriate fiscal and policy committees of the Legislature that review bills relating to energy and public utilities. The reports shall contain an evaluation of the progress and status of the implementation of this section. In addition, the reports shall identify each instance in which an exemption authorized by subdivision (b) of Section 25620.3 was utilized.

(i) The provisions of this section are severable. If any provision of this section or its application is held to be invalid, that invalidity shall does not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. Section 25620.10 of the Public Resources Code, as added by Section 9 of Chapter 515 of the Statutes of 2002, is amended and renumbered to read:

~~25620.10.~~

25620.11. The commission shall regularly convene an advisory board that shall make recommendations to guide the commission's selection of programs and projects to be funded under this chapter. The advisory board shall be made up of include as appropriate, but not be limited to, representatives from the Public Utilities Commission, consumer organizations, environmental organizations, and electrical corporations subject to the funding requirements of Section 381 of the Public Utilities Code.

SEC. 7. Section 445 of the Public Utilities Code is amended to read:

445. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby created within the Renewable Resource Trust Fund:

- 1 (1) The Existing Renewable Resources Account.
- 2 (2) New Renewable Resources Account.
- 3 (3) Emerging Renewable Resources Account.
- 4 (4) Customer-Credit Renewable Resource Purchases Account.
- 5 (5) Renewable Resources Consumer Education Account.

6 (c) The money in the fund may be expended for the state's
7 administration of this article only upon appropriation by the
8 Legislature in the annual Budget Act.

9 (d) Notwithstanding Section 383, that portion of revenues
10 collected by electrical corporations for the benefit of in-state
11 operation and development of existing and new and emerging
12 renewable resource technologies, pursuant to paragraphs (3) and
13 (6) of subdivision (c) of Section 381, shall be transmitted to the
14 State Energy Resources Conservation and Development
15 Commission (hereafter the Energy Commission) at least quarterly
16 for deposit in the Renewable Resource Trust Fund. After setting
17 aside in the fund money that may be needed for expenditures
18 authorized by the annual Budget Act in accordance with
19 subdivision (c), the Treasurer shall immediately deposit money
20 received pursuant to this section into the accounts created pursuant
21 to subdivision (b) in proportions designated by the Energy
22 Commission for the current calendar year. Notwithstanding
23 Section 13340 of the Government Code, the money in the fund and
24 the accounts within the fund are hereby continuously appropriated
25 to the Energy Commission without regard to fiscal year for the
26 purposes enumerated in Section 383.5.

27 (e) Upon notification by the Energy Commission, the
28 Controller shall pay all awards of the money in the accounts
29 created pursuant to subdivision (b) for purposes enumerated in
30 Section 383.5. The eligibility of each award shall be determined
31 solely by the Energy Commission based on the procedures it
32 adopts under subdivision (h) of Section 383.5. Based on the
33 eligibility of each award, the Energy Commission shall also
34 establish the need for a multiyear commitment to any particular
35 award and so advise the Department of Finance. Eligible awards
36 submitted by the Energy Commission to the Controller shall be
37 accompanied by information specifying the account from which
38 payment should be made and the amount of each payment; a
39 summary description of how payment of the award furthers the
40 purposes enumerated in Section 383.5; and an accounting of future

1 costs associated with any award or group of awards known to the
2 Energy Commission to represent a portion of a multiyear funding
3 commitment.

4 (f) The Energy Commission may transfer funds between
5 accounts for cashflow purposes, provided that the balance due
6 each account is restored and the transfer does not adversely affect
7 any of the accounts. The Energy Commission shall examine the
8 cashflow in the respective accounts on an annual basis, and shall
9 annually prepare and submit to the Legislature a report that
10 describes the status of account transfers and repayments.

11 (g) The Energy Commission shall, on an annual basis, report to
12 the Legislature on the implementation of this article. Those annual
13 reports shall be submitted to the Legislature not more than 30 days
14 after the close of the fiscal year and shall include information
15 describing the awards submitted to the Controller for payment
16 pursuant to this article, the cumulative commitment of claims by
17 account, the relative demand for funds by account, a forecast of
18 future awards, and other matters the Energy Commission
19 determines may be of importance to the Legislature.

20 (h) The Department of Finance, commencing March 1, 1999,
21 shall conduct an independent audit of the Renewable Resource
22 Trust Fund and its related accounts annually, and provide an audit
23 report to the Legislature not later than March 1 of each year for
24 which this article is operative. The Department of Finance's report
25 shall include information regarding revenues, payment of awards,
26 reserves held for future commitments, unencumbered cash
27 balances, and other matters that the Director of Finance determines
28 may be of importance to the Legislature.

29 *SEC. 8. Division 4.7 (commencing with Section 9201) of the*
30 *Public Utilities Code is repealed.*

